



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/820,271	03/27/2001	Robert W. Fair	12492-02/NEC	1967

32605 7590 08/11/2005

MACPHERSON KWOK CHEN & HEID LLP
1762 TECHNOLOGY DRIVE, SUITE 226
SAN JOSE, CA 95110

EXAMINER

FISCHETTI, JOSEPH A

ART UNIT	PAPER NUMBER
----------	--------------

3627

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/820,271

Applicant(s)

FAIR ET AL.

Examiner

Joseph A. Fischetti

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) 11-60 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

Claims 1-3,6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shavit et al in view of Conklin et al.

Shavit et al disclose forming a business relationship between the third party interactive market management system 50) and a plurality of business service providers (sellers 83,84,96,94);facilitating real time communication between the business service providers and clients of the business service providers (buyers 82) via the network (50) (col. 8 lines 5-15 in Shavit et al. disclose a complete interactive service which has immediate confirmation and the interactive process retrieves and modifies information on a remote database and which translates and transmits transactions to and a user computer since the definition of real time includes updating information at the same rate of receiving it, see remarks below); facilitating automatic billing of the client and automatic payment of the business service provider for a consultation (col.28, function 390 provides for direct payment which is read as "automatic").

However, although Shavit et al. disclose information services, nevertheless fail to disclose facilitating negotiation between the business service provider and the clients for a time based consulting fee. Conklin et al. Disclose an iterative bargaining system which allow purchaser and seller to iteratively negotiate price on line before sale. It would be obvious to modify Shavit et al to include such a negotiating engine the motivation being that this would give the benefit of the bargain to the transaction.

Re claim 2: System 50 is disclosed as carrying out payment instructions see col. 8 lines 57-58);

Re claim 3: Shavit et al. disclose online public networks e.g. internet.

RE claim 6: Shavit et al. disclose a personal computer 62.

Re claim 7,8,9, 10: col. 9 lines 60-61 disclose security protocols which insure secure communications which protocols and a common level of security between the two parties. Shavit et al., col. 9 lines 65-68, four levels of security supports different protocols the highest level being the obvious level of choice. Re claim 10: Shavit et al. discloses four levels of security and to place the highest between the customer and business is obvious to protect the transaction information from theft, and official notice is taken regarding this, see, e.g. PAY PAL.

Claims 1,4,5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shavit et al in view of Conklin et al. as applied above, and further in view of Elliot et al. The aforesaid combination fails to disclose facilitating communication between business service providers and clients which use different communications protocols with respect to one another. However, Elliot et al. do disclose facilitating communication between business service providers and clients which use different communications protocols with respect to one another. It would be obvious to modify the aforesaid combination with a different communication protocol facilitator, the motivation being the ability to communicate through different systems.

Applicant's arguments filed 5/25/05 have been fully considered but they are not persuasive. Applicant argues that the system of Shavit et al (the base reference-) "discloses an interactive market management system that does not occur in real time...". However, the Examiner does not see it that way. The examiner points the applicant to col. 8, lines 5-15 wherein an embodiment is disclosed which covers the definition of "real time". This term is defined as:

re·al·time (ré'el-tim', rēl'-) *adjective*

Computer Science.

Of or relating to computer systems that update information at the same rate as they receive data, enabling them to direct or control a process such as an automatic pilot.

The American Heritage® Dictionary of the English Language, Third Edition copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation; further reproduction and distribution restricted in accordance with the Copyright Law of the United States. All rights reserved.

Shavit et al in col. 8 lines 5-15 disclose a complete interactive service which has immediate confirmation and the interactive process retrieves and modifies information on a remote database and which translates and transmits transactions to and a user computer since the definition of real time includes updating information at the same rate of receiving it. There can be no doubt that the updating of information in an interactive manner constitutes "real time " because "receiving and modifying" of data must be seen as a same rate updating as set forth by the definition. Re claim 10: Shavit et al. discloses four levels of security and to place the highest between the customer and business is obvious to protect the transaction information from theft, and official notice is taken regarding this, see, e.g. PAY PAL.

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication should be directed to PRIMARY EXAMINER Joseph A. Fischetti at telephone number (703) 305-0731.

JOSEPH A. FISCHETTI
PRIMARY EXAMINER
